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**By email only to: [consultations@ofreg.ky](mailto:consultations@ofreg.ky)**  
Utility Regulation and Competition Office  
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CAYMAN ISLANDS

**Re: E&U 2020 – 1 - Consultation on Proposed Regulatory Accounts**

We refer to the E&U 2020 – 1 - Consultation launched by the Utility Regulation and Competition Office (“OfReg” or the “Office”) on March 10, 2020 in which the Office made the determination to recommend that Cabinet enact the Proposed Regulatory Accounts Rules.

We appreciate the Office’s consideration of our response to E&U2019–3 –Consultation on the proposed Regulatory Accounts Rules, but believe, with all due respect, that in making this determination the Office has underestimated the resources that will be required to enact the proposed Rules, and overestimated the benefits to consumers from such Rules going into effect.

Please find below the subject consultation response from Caribbean Utilities Company, Ltd (“CUC”).

**Question 1: Do you have any or additional comments on the proposed Regulatory Accounts Rules.**

We provide our additional comments in response to each of the reasons provided by the Office for its determination.

*OfReg Reason #1 - Regulatory accounts provide an analysis of information derived from financial records to reflect as closely as possible the performance of parts of a business as if they were operating as separate business units. The information in turn is a valuable tool in*



*demonstrating that there is no undue discrimination between the dominant operators' own downstream arm and competing operators or between one competitor and another when providing similar services. This is relevant in the Cayman Islands electricity sector insofar as it is possible for there to be new entrants into the generation market, for example the proposed Waste-to-Energy plant and other utility-scale renewable energy (RE) plants.*

CUC Comment: In 2014, the former Electricity Regulatory Authority (ERA) conducted a solicitation for 36MW of Firm Generating Capacity for Grand Cayman. In that report, ICF International, consultants to the ERA for the solicitation process, provide the following commentary –

One of the priorities in this solicitation was to make the evaluation of bids even more transparent than in the past, so that both the process and the reasons for the award or deduction of points would be quite clear. To do so, we modified some criteria and took a number of the sub-criteria and matrices that we used in prior solicitations for internal analysis, and put them explicitly into the RFP. This structure is consistent with international best practices for competitive solicitations.

ICF also worked with the ERA and CUC on a draft power purchase agreement (PPA), modified from prior solicitations to improve several provisions that bidders considered unfinanceable. The ERA provided the RFP and draft PPA to all qualified bidders, and conducted a pre-bid meeting in February 2014. At this meeting, ICF presented how the process and scoring would progress, and answered numerous questions from the qualified bidders, both at the meeting and in the weeks before bids were due.

In the end, the ERA received bids from three firms, CUC, LBG and DECCO, with CUC submitting three bids and DECCO submitting two bids, for a total of six proposals. By taking the many steps described in this report, the ERA conducted a robust competitive solicitation process designed to ensure continued reliability of service and identify the best possible source – from both an economic and a technical perspective - of new generation capacity for Grand Cayman.

We believe that there are adequate measures that can be taken by OfReg to conduct a fair, transparent and competitive generation solicitation without adding the costs and regulatory burden that will come if these proposed Rules are put into effect.

For convenience we have attached a copy of the ICF report to this letter. CUC was the successful bidder and its price bid was 20% better than the next closest bid.

*OfReg Reason #2 - Moreover, the information in the regulatory accounts also helps in demonstrating the existence or absence of any unfair cross-subsidisation of competitive or non-regulated services from the monopoly part of the business. This is of importance to a wider group of stakeholders including customers and players in those non-regulated sectors. In*



*addition, the information underpins prices charged by the regulated entity, a matter of interest to all electricity customers.*

CUC Comment: Although this is in reference to the monopoly provider, CUC does not provide any non-regulated services therefore we fail to see how the Proposed Rules would provide benefit for this stated reason.

*OfReg Reason #3 - The Office believes that having Licensee submit regulatory accounts would provide stakeholders beyond the Office with the information to assess these issues and, insofar as new entrant generators are concerned, it will assist in demonstrating the absence (or detecting the presence) of anti-competitive behaviour at levels of disaggregation applicable to the relevant retail and wholesale markets, thus supporting and promoting the development of a competitive regime in the generation market*

CUC Comment: Please see our comment above as it relates to the 2014 Generation solicitation process.

*OfReg Reason #3 - Furthermore, the Office notes that the requirement for submission of Licensees' Regulatory Accounts is in line with international best regulatory practice, is done in similar sized jurisdictions, and will also assist in demonstrating that Licensees' charges are cost based, transparent and non-discriminatory, and reasonable for a monopoly service provider.*

CUC Comment: CUC's parent company Fortis Inc. is a leader in the North American utility industry with assets of over \$53 billion and 2019 revenue of \$8.8 billion. Fortis has utility operations in five Canadian provinces, nine U.S. states and three Caribbean countries. None of the Fortis subsidiaries is required to submit regulatory accounts in the format proposed in these Rules.

Additionally, our auditors, Deloitte LLP have confirmed that they are not aware of any utilities in their coverage area that are required to submit regulatory accounts in the format proposed in these Rules.

We would therefore question if the Proposed Rules do in fact represent international best regulatory practice.

While we do agree that there are some utilities in similar-sized jurisdictions who use regulatory accounts, it is unclear if these utilities had been previously operating as a vertically integrated utility and subsequently transitioned to reporting as separate business units. We believe that further investigation is required to determine international best regulatory practice.



**Question 2: Please provide your views on any other matters you consider relevant to this Consultation.**

CUC has traditionally operated as a vertically integrated utility and therefore any attempt to split its operations into several business segments will be expensive, time consuming and onerous.

Also, any proposed methodologies will have to be approved by OfReg which will be timely and costly. The proposed accounts separation process and ACAM development will require significant additional resources. This would be separate from the ongoing staffing cost. We reiterate the concerns expressed in our response to E&U 2019-3 - these costs will ultimately be passed on to all consumers of electricity in Grand Cayman.

CUC's Auditors, Deloitte LLP have also reviewed the proposed Rules and provided the following additional observations:

1. The guidelines refer to GAAP in Grand Cayman. Deloitte has requested clarity on the relevant GAAP because if CUC is required to follow anything other than US GAAP, under which we currently report, it will mean that CUC will need to retain books and records under two different GAAPs;
2. The auditor reports under the proposed guidelines do not conform to any of Deloitte's professional standards. As such, their audit reports would need to be modified from what is in the guidelines to comply with their professional standards;
3. Certain of the direct costs and direct assets between transmission, distribution and generation would be easier to identify than others. All other revenues, expenses, assets and liabilities would have to be carved out using a very specific and consistent methodology. Since CUC is a fully integrated operation it is likely that OfReg would first need to sign off on that methodology and assumptions made. This is not a small undertaking, and CUC would need to provide sufficient rationale, support and documentation in order for the auditors to be able to audit such carve outs.
4. CUC's IT system and books and records (GL, AR & AP subledgers, etc) are not currently set up to handle such a carveout. We would need to investigate what modifications would need to be made to handle this carve out data. At this time it is uncertain whether our current system could be configured to handle such a change.

For the reasons stated above we respectfully request that OfReg reconsider its determination.

Finally, if the Rules were to be enacted it would be remiss of us not to express our concerns that the current COVID-19 pandemic could significantly impact CUC's available resources to implement the Rules prior to 2021.



Yours faithfully,

May 1 2020 4:56 PM  
**X** *Lawrence Letitia* **✓**  
Lawrence Letitia DocuSign

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Letitia T. Lawrence  
VP Finance & CFO